



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0127; FRL-10015-74-Region 3]

Air Plan Approval; Maryland; Ozone Interprecursor Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to the expansion in the use of Emission Reduction Credits (ERCs) when new or modified major stationary sources of ozone precursors are required to obtain emission offsets within the State of Maryland. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0127 at <https://www.regulations.gov>, or via email to opila.marycate@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will

generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Cynthia Stahl, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2180. Ms. Stahl can also be reached via electronic mail at stahl.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: On January 31, 2020, the State of Maryland submitted a revision to its SIP to allow the use of interprecursor trading (IPT) within the state to satisfy the emission offset requirements for new or modified major stationary sources under the New Source Review (NSR) program pertaining to ground level ozone. Volatile Organic Compound (VOC) and Nitrogen Oxide (NO_x) are ozone precursor pollutants. The Maryland SIP revisions would allow for new or modified major stationary sources seeking emission offsets to obtain either VOC or NO_x offsets provided that these are obtained within Maryland and in an area designated with the same or greater stringency as the area in which the new or modified source is located.

I. Background

The revision consists of amendments to Code of Maryland Regulations (COMAR) 26.11.17, Nonattainment Provisions for Major New Sources and Major Modifications, Sections .01, Definitions, and .04, Creating Emission Reduction Credits, Air Quality. The revision is

applicable to major new sources and major modifications of sources whose potential VOC and/or NO_x emissions trigger the emission offset requirements under COMAR 26.11.17. Maryland contains the Baltimore Ozone Nonattainment area but is also entirely within the Ozone Transport Region (OTR). The Clean Air Act requires that areas within the OTR must meet ozone nonattainment area requirements that would apply if they were classified as moderate ozone nonattainment areas. For both of these types of ozone nonattainment areas, in accordance with current requirements, sources would need to offset each ton of VOC or NO_x with more than one ton of ERCs. This greater than one-for-one offset requirement would continue to apply under the Maryland IPT program.

On December 6, 2018, EPA finalized its ozone implementation rule pertaining to the 2015 Ozone NAAQS (83 FR 62998). With this rule, among other provisions, EPA described a discretionary IPT program that would allow any new or modified major stationary source located in an ozone nonattainment area to satisfy the nonattainment NSR emission offset requirements for ozone with emission reductions from VOC or NO_x, interchangeably. These requirements are codified at 40 CFR 51.165(a)(11). Under this program, the IPT ratio, substantiated by EPA approved air quality modeling, is required to be established to ensure that an equivalent or greater air quality benefit is obtained to achieve reasonable further progress toward attainment of the ozone standard for the designated ozone nonattainment area.

II. Summary of SIP Revision and EPA Analysis

Maryland's revision to COMAR 26.11.17.01 adds the definition for interprecursor trading, which includes a reference to the new COMAR 26.11.17.04 regulation. Maryland's revision to COMAR 26.11.17.04 pertains to its Nonattainment New Source Review (NNSR) program, which requires that facilities obtain ERCs. COMAR 26.11.17.04 requires that the

facilities seeking the option of IPT must meet the current requirements for ERCs including those pertaining to location, determination of the amount of ERCs needed for the new source via the baseline to actual emissions calculations, and eligibility determined by the date of creation of the ERCs. COMAR 26.11.17.04 further specifies that the IPT ratio must be determined by an approved EPA air quality modeling methodology and the IPT ratio cannot be less than the emission offset ratio specified in COMAR 26.11.17.03B(3). The approving authority for the interprecursor trade is the Maryland Department of the Environment and such approval is granted on a case-by-case and a permit specific basis.

EPA has reviewed the Maryland revisions to COMAR 26.11.17.01 and .04 and determined that they meet the EPA 2015 ozone implementation final rule published in the Federal Register at 83 FR 62998, December 6, 2018.

III. Proposed Action

EPA's review of this material indicates the Maryland amendments to COMAR 26.11.17.01 and .04, Air Quality: Nonattainment Provisions for Major New Sources and Major Modifications pertaining to interprecursor trading meets the requirements at 40 CFR 51.165(a)(11). EPA is proposing to approve the Maryland Department of the Environment's SIP revision to add the definition of interprecursor trading to COMAR 26.11.17.01 and to add the requirements for the IPT program through COMAR 26.11.17.04. EPA is proposing to approve Maryland's NNSR IPT program, which was submitted on January 31, 2020. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference COMAR 26.11.17.01, effective on April 9, 2018, and COMAR 26.11.17.04, effective on December 30, 2019 described in Sections II and III of this preamble. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, addressing the ozone interprecursor trading requirements in Maryland, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 9, 2020.

Cosmo Servidio,
Regional Administrator,
Region III.